

International Cooperation and Competition Policy

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Introduction

The objective of this paper is to argue that the dissemination of competition laws is positive for the world economy. However, the benefits derived depend crucially on adequate enforcement and institutional building in the various jurisdictions for which international cooperation within WTO and in other fora is crucial.

The paper addresses two issues. Section 1 underlines a few aspects of the increasing importance of competition policy in the developing world. The second section provides a few suggestions for the international cooperation agenda.

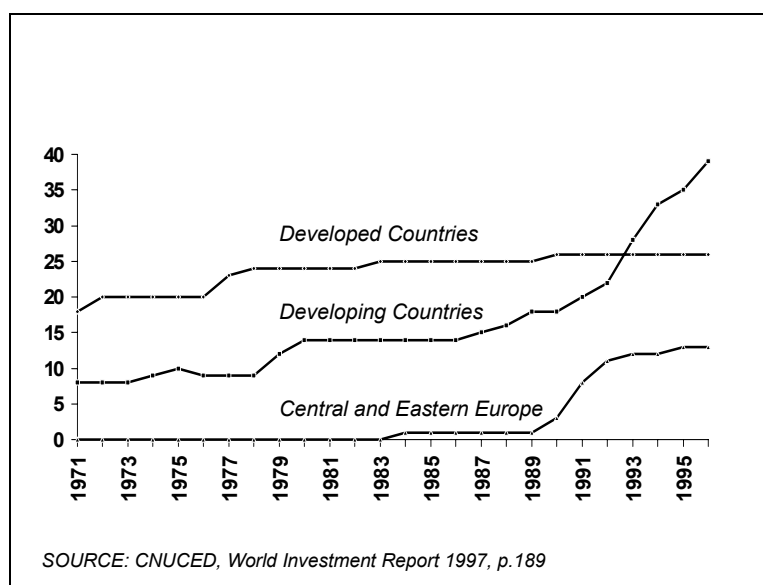
1. The Increasing Importance of Competition Policy for the Developing World

1.1 The Dissemination of National Competition Laws

The last decade has been characterized by the dissemination of competition laws throughout various jurisdictions, specially in developing countries, as Table 1 shows. According to the 1997 Unctad World Investment Report, more than seventy nations have now competition laws, in contrast with less than forty in the eighties. In the second quarter of 1999, 83 countries had competition laws in force and 23 were developing new laws in the area².

Table 2 illustrates that a new wave of competition laws is taking place in the nineties, involving a larger number of countries than in the previous ones of the turn of the last century and of the immediate postwar period.

Table 1: Number of Countries with Competition Laws



² This information has been kindly provided by a US competition enforcer based on various sources and direct contact with the countries involved.

Table 2: National Competition Laws

PERIOD	COUNTRIES
1890-II World War	<i>United States, Canada and Australia.</i>
After II World War	<i>Germany, European Union, United Kingdom, Japan, Sweden, France, <u>Brazil (1962)</u>, Argentina, Spain, Chile, Colombia, Thailand, India, South Africa and Pakistan.</i>
1980...	<i>Kenya, Sri Lanka and Korea.</i>
1990...	<i>Russian Federation, Peru, Venezuela, Mexico, Jamaica, Czech Republic, Slovakia, Côte d'Ivoire, Bulgaria, Kazakhstan, Poland and initiatives in many other countries.</i>

SOURCE: Information from Khemani and Dutz (1994), Boner and Krueger (1992), Boner (1995) and Rowat (1995).


1.2 Different Stages of Institutional Development of the National Competition Policies

The implementation of competition policy requires time, cultural change and investment in adequate institutions. Therefore it is not surprising that competition laws and enforcement vary widely across countries.

Despite this historical nature of competition policy, it is useful, for analytical purposes, to identify a sequence of evolutionary stages which could serve as a reference for comparisons among different countries.

The above considerations show the importance of defining priorities and setting a plan for institutional building. Table 3 contains a useful timetable to serve as a reference for governments.

Table 3: Timetable for Implementation of Competition Policy

STAGES	<div>I</div>	<div>II</div> 	<div>III</div>	Institutional Maturity <div>IV</div>
NATIONAL	<div>1. Competition Advocacy</div> <div>+</div> <div>2.Repression of Horizontal Agreements</div> <div>+</div> <div>3. Technical Assistance</div>	<div>I</div> <div>+</div> <div>4. Merger Control</div> <div>+</div> <div>5. Vertical Agreements</div>	<div>II</div> <div>+</div> <div>6. Regulation</div> <div>+</div> <div>7. International Cooperation Agreements</div>	<div>III</div> <div>+</div> <div>8. Second-Generation International Agreements</div> <div>+</div> <div>9. Pro-Active Competition Advocacy</div>
MERCOSUR	Harmonization Agenda	Competition perspective into antidumping analysis		
WTO	General Guidelines			

The sequencing proposed is based on a simple idea inspired by Khemani and Dutz (1995). Given its limited resources, the agency should start with the actions which most likely benefit the market. Gradually it would introduce measures which require more sophisticated cost/benefit analysis. Merger review comes after conduct control due to the fact that the welfare effect of a merger might be less clear than that of a price cartel, the latter being unequivocally welfare reducing.

The stages suggested are organized according to the degree of difficulty authorities face in undertaking cost/benefit analysis of the impact of competition measures on social welfare. However, it might well be the case that legally sound repression of price cartels turns out to be more difficult than the implementation of a merger review system. In fact, it is generally easy to assess the microeconomic impact of a cartel but it is hard to fulfill the requirements for an acceptable standard of proof for the courts. Therefore, the actual plan should take into account not only the difficulty in assessing the welfare impact of a particular antitrust illicit, but also the expected return on each dollar spent on the particular line of action, given the relative probabilities of success of alternative public policies.

2. The International Cooperation Agenda

Although only preliminary, the above evidence suggests the need to focus on the quality of competition law enforcement rather than on the mere enactment of the

legislation. This implies that effective international cooperation in the area of competition policy has to go beyond standard forms coping with the challenge of institutional building.

2.1 The Major Lines of Action for International Cooperation

There are three major areas for which international cooperation is needed and they are all of great interest for developed and developing countries:

- combat hard-core cartels;
- reduce the transaction costs of merger control;
- promote institutional building and disseminate competition culture.

2.2 The Need for Coordination among Competition Agencies

As pointed out in BRAZIL (1998), two factors explain the importance of international cooperation for the first two areas:

i) different from the jurisprudence of the sixties and seventies, there are more and more cases which not only present the same characteristics in several markets; they constitute in reality cross-border mergers or generalized conducts. Therefore, the potential for inconsistent decisions among different national agencies is high.

ii) the frequency of cross-border transactions poses the problem of transaction costs firms incur when they have to comply with so many applications and bureaucratic timetables. Efforts to harmonize particular requirements (e.g., for merger review) could be useful even without a more profound convergence in the legislation.

Brazil provides a good illustration. 17% of the merger cases analysed in 1998 represent transactions which were generated by global strategies on the part of foreign groups. In many instances the operations were reviewed by several other national agencies besides CADE.

2.3 Institutional Underinvestment and Lack of Competition Culture

Although it is hard to overstate the importance of the first two areas indicated above, it is the third area that merits particular attention when one is concerned about international cooperation.

Indeed, there is a central problem of political market failure. In each national jurisdiction there will be a tendency for institutional underinvestment. There are not necessarily enough national constituencies who will support independent competition law enforcement. Although the problem is not peculiar to developing countries, it becomes more acute in jurisdiction which are at very early stages of institutional development and where competition culture is not widespread.

Developing countries start implementing competition laws under very unfavorable circumstances. Kovacic (1997) contains a list of factors which make the task

all more difficult for developing countries' authorities, to which one could add a few more elements in order to get the following set of obstacles:

- resources are extremely scarce
- lack of professional expertise
- lack of jurisprudence
- frail academic infrastructure
- weak professional associations and consumer groups
- inadequate judicial systems
- bad reputation of the public sector: excessive bureaucracy, lack of transparency and corruption
- political and bureaucratic resistance

The competition official in the mature jurisdictions has to apply competition principles given a stable and adequate pre-existing environment. The competition official in a developing country has to help create such an environment for effective application of competition law.

Moreover, note that there are economies of scale and economies of learning for the implementation of competition laws; at earlier stages one would need more resources and not less. The problem is attenuated by the fact that learning from the pioneers in the field has been made a lot easier and less costly due to Internet and other media. The telecommunications revolution has made available technical papers and decisions which are very useful for the competition official, as well as the possibility for fast exchange of ideas and opinions.

Therefore, there should be a permanent concern to incorporate the world best practices in competition policy, for which benchmarking exercises are particularly important.

The increasing globalization of firms is also changing the private sector's view on the matter. At times, international firms have put pressure on local governments to set stable and transparent rules. National firms are also changing their views on the usefulness of a modern regulatory framework.

2.4 The Cooperation Agenda and the Stages of Institutional Development

The focus of international cooperation will depend upon the stage of institutional development of each national jurisdiction, as summarized in Table 4.

Table 4 : Stages of Institutional Development and the Cooperation Agenda

Stages	Cooperation Agenda	Content
I and II	Technical assistance	Training and drafting of legislation and procedures in line with due process
III	Simple cooperation agreements	Cooperation in selected cases with exchange of public information
IV	Advanced Cooperation Agreements	Systematic cooperation with exchange of confidential information

At Stages I and II of Table 3, technical assistance seems to be more appropriate. It will occur most likely between a developed country and a developing one. Technical assistance from countries in intermediary positions should be stimulated since the institutional environments might be similar and useful in terms of adopting new strategies for the implementation of competition law.

At Stage III, when the agency has already built in some internal experience, simple cooperation agreements including exchange of public information can be helpful. However, one should be realistic regarding two aspects: i) the limited resource endowment would not permit joint action in all cases; ii) sharing of confidential information would face serious legal constraints.

More advanced agreements, including exchange of confidential information, would require institutional maturity and greater homogeneity and integration among the participants.

2.5 The Cooperation Agenda at the Regional and Multilateral Levels

The Regional Level

The agenda of the regional blocks have usually dealt with two issues. First, the harmonization of the national competition laws, which includes the creation of a new legal framework in certain countries as in the case of some of the Eastern European nations.

Second, the member states have to negotiate the convergence of the antidumping rules into competition ones. This is not trivial theoretically or politically, but it is a question which has to be coped with in order to stimulate trade within the block.

The Multilateral Level

A worldwide transformation of the antidumping rules into competition rules does not seem to be realistic in the near future. Any kind of international code or legislation in competition seems to be premature given the great diversity of experiences and stages of development of the members of WTO.

The definition of general principles in regard to the prerequisites that a national law has to have to provide legal certainty to private agents seems to be the relevant agenda at the multilateral level. Although not comprehensive, the WTO principles of most-favored nation, national treatment and transparency are of particular relevance for the building of solid competition institutions in the developing world³.

In addition to such definition, a number of actions could be undertaken:

- elaboration of standards for bilateral and plurilateral agreements;
- incentive for benchmarking exercises such as voluntary country reviews;
- greater coordination and funding for technical assistance;
- regular reports on world competition policy.

Conclusion

Technical assistance and technical cooperation are crucial for institutional building in competition policy. Of course one has to be very careful in order to select from the foreign experience the appropriate lessons for one's own legal and cultural environment. But the important point is that cooperation has to be understood in the context of the educational role of multilateral organizations more than in a result-oriented approach.

³ The importance of the last two has been emphasized in BRAZIL (1998).

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